

In Re:
Joel J Duclos,

Debtor,

Case No. 04-45045
Chapter 13 Case

NOTICE OF HEARING AND MOTION FOR RELIEF FROM THE STAY

TO: Debtor(s) and other entities specified in Local Rule 9013-3.

1. Nissan Motor Acceptance Corporation as servicing agent for Nissan-Infiniti LT moves the Court for the relief requested below and gives notice of hearing.
2. The Court will hold a hearing on this motion on October 28, 2004 at 2:00 PM o'clock, in Courtroom No. 8 West, at the United States Courthouse, 300 South Fourth St, Minneapolis, MN.
3. Any response to this motion must be filed and delivered not later than October 25, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than October 19, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**
4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on September 9, 2004. The case is now pending in this court.
5. This motion arises under 11 U.S.C. §362(d), §365(a) and (d), and Fed. R. Bankr. P. 4001 and 6006. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9006-1, 9013-1 through 9013-3, and 9017-1. Movant seeks relief from the automatic stay of §362(a), to terminate the lease and to repossess the 2002 NISSAN PATHFINDER 4WD VEHICLE leased to Debtor, and requests the court permit Movant to immediately enforce the order requested, without the 10 day

stay imposed by Rule 4001(a)(3).

6. Movant requests relief under §362(d)(2). Debtor has no equity in the vehicle and the vehicle is not necessary to an effective reorganization. Movant requests relief for cause under §362(d)(1). Failure to assume the Lease and to provide adequate protection or adequate assurance of future performance under the Lease constitutes cause.
7. If testimony is necessary as to any facts relevant to this motion, the person who signed the verification to this motion or some other representative for Movant, from Movant's offices in Minnesota, will testify regarding the Lease terms and default.
8. This notice of motion and motion also serve as notice of default required by Cobb v. Midwest Recovery Bureau Co., 295 N.W.2d 232 (Minn.1980). If the default is not cured before the hearing, Movant will repossess the property promptly upon the Court signing the Order.
9. A separate Memorandum of Fact and Law is attached hereto and made a part hereof.

WHEREFORE, Nissan Motor Acceptance Corporation as servicing agent for Nissan-Infiniti LT moves the Court for an order modifying the automatic stay of §362(a) and the codebtor stay of §1301(a), if applicable, and such other relief as may be just and equitable.

Dated: October 1, 2004

STEWART, ZLIMEN & JUNGERS, LTD.

/e/ Linda Jeanne Jungers

Linda Jeanne Jungers, Atty ID #5303X

Attorneys for Movant

430 Oak Grove Street #200

Minneapolis, MN 55403

612-870-4100

This is a communication from a debt collector attempting to collect a debt. Any information obtained will be used for that purpose.

STATE OF MINNESOTA

CERTIFICATE OF TITLE FOR A MOTOR VEHICLE

VEHICLE IDENTIFICATION NUMBER JN8DR09Y32W726729		YEAR 02	MAKE NISS	MODEL/BODY 4W PFI	TITLE NUMBER H128DP061
DATE ISSUED 05/08/02	ODOMETER 40	TAX BASE 028189	CODE 09	PLATE NUMBER HVS355	CENTRAL OFFICE USE ONLY
NEW		04/01/02	EXP 03		83-46182

NO SECURITY INTERESTS

DOB

OWNER

NISSAN-INFINITI LT

P O BOX 660368
DALLAS TX 75266-0368

ASSIGNMENT OF OWNERSHIP

ODOMETER DISCLOSURE STATEMENT, I (WE) CERTIFY THAT THE ODOMETER NOW READS (NO TENTHS) MILES AND TO THE BEST OF MY KNOWLEDGE THE ODOMETER MILEAGE IS:

☐ ACTUAL MILEAGE

☐ EXCEEDS MECHANICAL LIMITS OF ODOMETER

☐ NOT ACTUAL MILEAGE — WARNING ODOMETER DISCREPANCY

DAMAGE DISCLOSURE STATEMENT. TO THE BEST OF MY KNOWLEDGE THIS VEHICLE

☐ HAS ☐ HAS NOT (CHECK ONE) SUSTAINED DAMAGE IN EXCESS OF 70% ACTUAL CASH VALUE.

POLLUTION SYSTEM DISCLOSURE STATEMENT. TO THE BEST OF MY KNOWLEDGE THE POLLUTION CONTROL SYSTEM ON THIS VEHICLE INCLUDING THE RESTRICTED GASOLINE PIPE

☐ HAS ☐ HAS NOT (CHECK ONE) BEEN REMOVED, ALTERED OR RENDERED INOPERATIVE.

Assignment: I (we) certify that this vehicle is free from all security interests, warrant title, and assign the registration tax and vehicle to:

SELLER'S PRINTED NAME(S)

DATE OF SALE

BUYER'S PRINTED NAME(S)

SELLER'S ADDRESS

DEALER LICENSE #

BUYER'S ADDRESS

SELLER'S SIGNATURE(S)

BUYER'S SIGNATURE(S)

IMPORTANT — PLEASE READ: All information collected on a motor vehicle application is required by law and is used to identify your motor vehicle. Failure to provide required information may result in denial of the requested action. Except for certain uses permitted by federal and state law, personal information contained in your application may not be disclosed to anyone without your express consent. You may expressly consent to the disclosure of your information by writing to the following address:

MINNESOTA DEPARTMENT OF PUBLIC SAFETY
DRIVER AND VEHICLE SERVICES DIVISION
445 MINNESOTA STREET, ST. PAUL, MINNESOTA 55101
PHONE 651-297-2126 TTY 651-282-6555
www.dps.state.mn.us/dvs

PS2700-11

KEEP IN A SAFE PLACE - ANY ALTERATION OR ERASURE VOIDS THIS TITLE

SELLER'S NOTICE OF SALE

When you sell this vehicle, you are responsible to file the information below with the Department of Public Safety within 10 days. You may file over the Internet at www.dps.state.mn.us/dvs or complete this post card and mail. This notice is not required if sold to a licensed dealer. MN Statute 168A.10



H128DP061

JN8DR09Y32W726729

Title Number

Vehicle Identification Number

Date of Sale

Purchaser's Driver License Number (if any)

Purchaser's Full Name

Purchaser's Date of Birth

Street Address

City

County

State

Zip Code

EXHIBIT A

MINNESOTA MOTOR VEHICLE REGISTRATION CARD

YR **02** MK **NISS** MDL **4W PFI**

VIN **JN8DR09Y32W726729**

GROSS VEHICLE WEIGHT/BASE VALUE **028189**

PLATE # **HVS355** EXP **03/31/03**

STICKER # **C0734526** TAX **361.00**

RECORDED OWNER(S):
NISSAN-INFINITI LT

P O BOX 660368
DALLAS TX 75266-0368



1. PARTIES

WAYZAYA NISSAN

612-475-3939

04/01/2002

15906 WAYZATA BLVD

WAYZATA, MN

55391

LEASE DATE

FLEET OFFER

CITY, STATE, ZIP CODE

LEASE TERM

Lessee & Co-Lessor
JOEL JAMES DUCLOS

3958 ADAIR AVE N

ROAD TO ROSSDALE

ROBBISSDALE MN

HENNEPIN

LEASE FOR PART OF LEASE IS A PURCHASE

3958 ADAIR AVE N

ROAD TO ROSSDALE

ROBBISSDALE MN

HENNEPIN

ZIP CODE

LEASE BEGINS MONTH OF DIFFERENT FROM ABOVE

CITY, STATE, COUNTY

ZIP CODE

"You" and "your" refer equally to the Lessee and Co-Lessor (if any) signing this Lease. "We," "us" and "our" refer to the Dealer, to Nissan-Financial LP ("NFLT") and any other assignees, if this Lease is assigned. "Vehicle" refers to the Motor Vehicle described below, including attachments, equipment and accessories. You agree to lease this Vehicle from us under the terms on the front and back of this Lease. You understand that this is a Lease. You do not own this Vehicle, unless and until you exercise your option to purchase this Vehicle.

2. DESCRIPTION OF LEASED PROPERTY	3. VEHICLE IDENTIFICATION NUMBER (VIN)
YEAR MAKE MODEL BODY STYLE	
2002 NISSAN PATHFINDER 4DR	J N 8 D 8 0 9 Y 3 2 W 7 2 6 7 2 9
Color New Used 40 BEIGE	
EXCISE TAX	Primary Use Commercial Use Personal, Family or Household

3. CONSUMER FINANCIAL DISCLOSURE TO	4. OTHER CHARGES (Not part of your monthly payment)	5. TOTAL OF PAYMENTS
AMOUNT DUE AT LEASE SIGNING OR DELIVERY	a) Disposition Fee (if you do not purchase the Vehicle)	(This amount you will have paid by the end of the lease)
MONTHLY PAYMENTS	b) _____	
Your first monthly payment of \$16.53 is due in signing, followed by 36 payments of \$16.53 due on the 1st of each month, beginning 05/01/2002	c) _____	
(From Section 4, itemized below)	d) Total	\$23128.14
\$3500.00		
The total of your monthly payments is \$20148.57		

6. ITEMIZATION OF AMOUNT DUE AT LEASE SIGNING OR DELIVERY	7. HOW THE AMOUNT DUE AT LEASE SIGNING OR DELIVERY WILL BE PAID
a) Capitalized Cost Reduction including any net trade-in allowance	i) Net Trade-In Allowance
b) First Monthly Payment	ii) Rebates and Non-Cash Credits
c) Refundable Security Deposit	iii) Amount To Be Paid in Cash
d) Title Fees	iv) Total
e) Registration Fees	
f) Tax on Capitalized Cost Reduction	
g) Sales Tax Paid in Advance	
h) DOCUMENT FEE	
i) ACQ. FEE	
j) _____	
k) Total	

8. YOUR MONTHLY PAYMENT IS DETERMINED AS SHOWN BELOW	9. ESTIMATED FEES AND TAXES
a) Gross Capitalized Cost. The agreed upon value of the Vehicle (\$36290.07) and any items you pay over the lease term such as taxes, fees, service contracts, insurance and any outstanding prior credit or lease balance. If you want an itemization of the amount, please see Section 7.	i) Rent Charge. The amount charged in addition to the depreciation and any amortized amount
b) Capitalized Cost Reduction. The amount of any net trade-in allowance, rebate, non-cash credit or cash you pay that reduces the gross capitalized cost.	ii) Total of Base Monthly Payments. The depreciation and any amortized amount plus the rent charge
c) Adjusted Capitalized Cost. The amount used in calculating your base monthly payment	iii) Lease Payments. The number of payments in your lease
d) Residual Value. The value of the Vehicle at the end of the lease used in calculating your base monthly payment	iv) Base Monthly Payment
e) Depreciation and Any Amortized Amounts. The amount charged for the Vehicle's decline in value through normal use and for other items paid over the lease term	v) Monthly Sales, Use or Lease Tax
	vi) Monthly Luxury Tax
	vii) Total Monthly Payment

10. EARLY TERMINATION	11. PURCHASE OPTION AT END OF LEASE TERM
Early Termination. You may have to pay a substantial charge if you end this lease early. This charge may be \$1000 or more, depending on when the lease is terminated. The earlier you end the lease, the greater this charge is likely to be. See Section 13.	Purchase Option at End of Lease Term. You have an option to purchase the Vehicle at the end of the lease term for \$ _____ and a Purchase Option Fee of \$160.00. See Section 14.
Excessive Wear and Use. You may be charged for excessive wear based on our standards for normal use and for mileage in excess of 15,000 miles per year at the rate of 15 cents per mile. See Section 19. If no wear is checked, this mileage includes _____ miles over the term of the lease purchased at \$ _____ cents per mile, which is included in your monthly payment.	18667.02

12. ITEMIZATION OF GROSS CAPITALIZED COST	13. ESTIMATED FEES AND TAXES
The following items you will pay over the lease term and are in your monthly payment:	The estimated total amount you will pay for official and license fees, registration, title and taxes, including personal property taxes, over the term of your lease, whether included with your monthly payments or assessed otherwise is \$2639.58. The actual total of fees and taxes may be higher or lower depending on the use rates in effect or the value of the leased property at the time a fee or tax is assessed.
a) Agreed upon value of the Vehicle	14. CREDIT LIFE INSURANCE AND WARRANTIES
b) Up-Front Sales Tax, if applicable	These coverages are not required to enter into this Lease and will not be provided unless you sign below. If insurance and/or warranties are purchased by you, the coverages are shown in a notice given to you on this date and are for the term of the Lease. (Please see below.) These coverages may not be available in some states.
c) Title, License and Registration	Credit Life Insurance
d) Acquisition Fee	15. CREDIT LIFE INSURANCE
e) Service Contract and/or Maintenance Contract (See Section 10)	16. CREDIT LIFE INSURANCE
f) Credit Life and/or Disability Insurance (See Section 10)	17. CREDIT LIFE INSURANCE
g) Outstanding Prior Credit or Lease Balance	18. CREDIT LIFE INSURANCE
h) _____	19. CREDIT LIFE INSURANCE
i) Total Gross Capitalized Cost	20. CREDIT LIFE INSURANCE

14. VEHICLE WARRANTIES	15. CREDIT LIFE INSURANCE
This Vehicle is covered by any warranty, extended warranty, service contract or maintenance contract indicated below:	21. CREDIT LIFE INSURANCE
Standard New Vehicle Limited Warranty provided by the manufacturer or distributor of this Vehicle	22. CREDIT LIFE INSURANCE
Mechanical Breakdown Protection (MBP), a service contract for the repairs of certain major mechanical breakdowns of this Vehicle and related expenses	23. CREDIT LIFE INSURANCE
Maintenance Contract, a contract for regularly scheduled care and maintenance of this Vehicle	24. CREDIT LIFE INSURANCE
Used Vehicle Limited Warranty	25. CREDIT LIFE INSURANCE
EXCEPT AS EXPRESSLY PROVIDED UNDER THIS LEASE, WE OFFER NO EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THIS VEHICLE. IN PARTICULAR, WE MAKE NO IMPLIED WARRANTY OF MERCHANTABILITY AND THERE IS NO WARRANTY THAT THIS VEHICLE WILL BE FIT FOR A PARTICULAR PURPOSE.	26. CREDIT LIFE INSURANCE

EXHIBIT B

Trade-In	BODY TYPE	Model No.	Loan	Retail	Trade-In	BODY TYPE	Model No.	Loan	Retail
Add Rockford Fosgate Stereo (Std. LE)					17250 King Cab SC (4WD) MD26Y 15525 20225				
Add Theft Recovery System					2003 FRONTIER CREW CAB-V6 MC: I				
2004 XTERRA-V6 MC: II					14375 Crew Cab XE (5 Spd.) ED27T 12950 17025				
XE 4 Cyl., 5 Spd.) DD26T					14475 C-Cab XE LB (5 Spd.) ED29X 13050 17125				
Utility 4D XE ED28T					15850 Crew Cab SE ED27T 14275 18600				
Utility 4D SE ED28T					15950 C-Cab SE LB ED29X 14375 18700				
Utility 4D SE SC MD28T					16650 Crew Cab SC MD27T 15000 19450				
Utility 4D XE (4WD) ED28Y					16750 C-Cab SC LB MD29X 15075 19550				
Utility 4D SE (4WD) ED28Y					16975 XE (4WD, 5 Spd.) ED27Y 15300 19800				
Utility SE SC (4WD) MD28Y					17075 XE LB (4WD, 5 Spd.) ED29Y 15375 20025				
Add Leather Seats					18850 SVE (4WD) MD27Y 16975 21925				
Add Rockford Fosgate Stereo (Std. SE)					18950 SVE LB (4WD) MD29Y 17075 22025				
Add Sunroof					19225 C-Cab SE (4WD) ED27Y 17325 22325				
Add Theft Recovery System					19325 C-Cab SE LB (4WD) ED29Y 17400 22425				
Deduct W/out AT, Ex. 4 Cyl.)					19250 C-Cab SC (4WD) MD27Y 17325 22350				
Deduct W/out Pwr Locks					19350 C-Cab SC LB (4WD) MD29Y 17425 22450				
Deduct W/out Pwr Wind					FRONTIER OPTIONS				
Deduct W/out Tilt					250 Add Alloy/Alum Wheels (King Cab Standard/XE)				
					400 Add Automatic Trans (Std. SE, Crew SVE/SC)				
					100 Add CD Player (King Cab Standard/XE)				
					175 Add Cruise Control (XE)				
					325 Add Leather Seats (Std. Crew SE 4WD)				
					125 Add Power Locks (XE)				
					175 Add Power Windows (XE)				
					225 Add Rockford Fosgate Stereo (Std. Crew SE 4WD)				
					225 Add Sunroof (Std. Crew SE 4WD)				
					75 Add Theft Recovery System (Std. Tilt Wheel XE)				
					125 Add Tilt Wheel XE				
					550 Deduct W/out Air Cond				
</									

SEE TRUCK OPTION PAGE FOR ADDITIONAL OPTIONS
MIDWEST EDITION - SEPTEMBER 2004

Trade-In	BODY TYPE	Model No.	Loan	Retain	Trade-In	BODY TYPE	Model No.	Loan	Retain
NISSAN					15150 Van SE N16 13650 17850				
2002 PATHFINDER-V6-4WD MC: II					15825 Van GLE N17 14250 18575				
16250	Utility 4D SE (2WD)	RO9X	14625	19025	75	Add CD (Std. SE, GLE)		75	100
17450	Utility 4D LE (2WD)	RO9X	15175	20425	400	Add Leather (Std. GLE)		400	450
17950	Utility 4D SE	RO9Y	16175	20975	500	Add Power Sunroof		500	575
19150	Utility 4D LE	RO9Y	17250	22250	175	Add Pir Seat (Std. GLE)		175	200
225	Add Bose Stereo (Std. LE)		225	250	250	Add Rear Air Cond.		250	300
400	Add Leather Seats		400	450		(Std. SE, GLE)			
450	Add Navigation System		450	500	150	Add Rear Buckle Seats		150	175
175	Add Power Seat		175	200		(GXE)			
500	Add Pir Srrf (Std. LE)		500	575	75	Add Theft Recovery System		75	100
450	Add Rear Entertainment Sys		450	575	2002 XTERRA-V6 MC: II				
75	Add Theft Recovery System		75	100	11750	XE (4 Cyl., 5 Spd.)	DD28T	10575	14200
525	Deduct W/out AT		525	525	13325	Utility 4D SE	ED28T	12020	15900
2002 FRONTIER-V6-5 Spd. MC: I					14325	Utility 4D XE SE	MD28T	12900	16975
9075	K-Cab Std. (4 Cyl.)	DD26S	8175	12250	14250	Utility 4D SE	MD28T	12825	16900
9775	King Cab XE (4 Cyl.)	DD26S	8800	12000	15250	Utility 4D SE SC	MD28T	13725	17950
10675	King Cab XE	ED26T	9625	12975	15025	Utility 4D XE (4WD)	ED28Y	3525	17725
11875	King Cab SE (AT)	ED26T	10700	14325	16025	Utility XE SC (4WD)	MD28Y	14425	18775
12450	King Cab SE	MD26T	11225	14975	15950	Utility 4D SE (4WD)	ED28Y	14375	17700
13175	King Cab XE (4WD)	ED26T	11875	15750	16950	Utility SE SC (4WD)	MD28Y	15275	19775
14375	K-Cab SE (4WD, AT)	ED26T	12950	17025	225	Add Roofrack Fogsate Stereo		225	250
14950	King Cab SC (4WD)	MD26T	13475	17625		(Std. SE)			
2002 FRONTIER CREW CAB-V6 MC: I					275	Add Sunroof		275	325
12450	Crew Cab XE (5 Spd.)	ED27T	11225	14975	75	Add Theft Recovery System		75	100
12550	C-Cab XE LB (5 Spd.)	ED29X	11300	15075	525	Del W/out AT (Ex. 4 Cyl.)		525	525
13775	Crew Cab SE	ED27T	12400	16375	175	Deduct W/out Cruise		175	175
13875	Crew Cab SE LB	ED29X	12500	16500	125	Deduct W/out Pir Locks		125	125
14375	Crew Cab SC	MD27T	12950	17025	175	Deduct W/out Pir Wind		175	175
14475	Crew Cab SC LB	MD29X	13050	17125	125	Deduct W/out Tit		125	125
14950	XE (4WD, 5 Spd.)	ED27T	13475	17625	NISSAN				
15050	XE LB (4WD, 5 Spd.)	ED29T	13550	17750	2001 PATHFINDER-V6-4WD MC: II				
16275	Crew Cab SE (4WD)	ED29T	14650	19050	14175	Utility 4D XE (2WD)	RO79X	12775	16800
16375	C-Cab SE LB (4WD)	ED29T	14750	19150	14775	Utility 4D SE (2WD)	RO79X	13300	17475
16875	Crew Cab SC (4WD)	MD29T	15200	19675	15775	Utility 4D LE (2WD)	RO79X	14200	18525
16975	C-Cab SC LB (4WD)	MD29T	15300	19800	15775	Utility 4D XE	RO79Y	14200	18525
FRONTIER OPTIONS					16375	Utility 4D SE	RO79Y	14750	19150
200	Add Alum Alloy Wheels		200	225	17375	Utility 4D LE	RO79Y	15650	20350
	(King Cab Standard/XE)				350	Add Leather Seats		350	400
425	Add AT (Std. SE, Crew SC)		425	475	350	Add Navigation System		350	400
75	Add CD Player		75	100	150	Add Power Seat		150	175
	(King Cab Standard/XE)				450	Add Pir Srrf (Std. LE)		450	500
150	Add Cruise Control*		150	175	375	Add Rear Entertainment Sys		375	425
275	Add Leather Seats		275	325	50	Add Theft Recovery System		50	75
100	Add Power Locks*		100	125	475	Deduct W/out AT		475	475
150	Add Power Windows*		150	175	2001 FRONTIER-V6-5 Spd. MC: I				

SEE TRUCK OPTION PAGE FOR ADDITIONAL OPTIONS
MIDWEST EDITION - SEPTEMBER 2004

EXHIBIT C

04-03987-0

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTAIn Re:
Joel J Duclos, Debtor,Case No. 04-45045
Chapter 13 Case

VERIFICATION FOR MOTION FOR RELIEF FROM STAY

I, Jill Jones, the Designated Agent for Nissan Motor Acceptance Corporation as servicing agent for Nissan-Infiniti I.T., the Creditor herein, declare under penalty of perjury that the following is true and correct according to the best of my knowledge, information and belief, and based on the Creditor's business records:

1. I am legally competent to testify and am personally familiar with the debt owed by Debtor to the Creditor on account no. 25005346182.
2. The Debtor leases a 2002 NISSAN PATHFINDER 4WD VEHICLE from the Creditor. The monthly lease payment is \$516.53. As of today, the lease payments are delinquent \$1625.00 for payments owing since 5/28/04, and for \$88.52 unpaid late charges. The Creditor owns the leased vehicle. The current NADA published retail value for the leased vehicle is \$20,975.00. The Debtor is believed to be in possession of the vehicle.
3. True and correct copies of the title documents are attached to the Motion as Exhibit "A". True and correct copies of the lease documents are attached as Exhibit "B".
4. The proposed chapter 13 plan says Debtor will surrender the vehicle; Debtor has failed to do so.
5. Creditor had commenced a state court replevin action to repossess the vehicle due to Debtor's failure to make lease payments and refusal to surrender the vehicle. The state court action has been stayed pending this motion.

Dated: 9/28/04
Jill JonesNissan Motor Acceptance Corporation as servicing agent for Nissan-Infiniti LT
Bankruptcy Dept.
PO Box 660366
Dallas, TX 75266-0366

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:
Joel J Duclos,

Debtor,

Case No. 04-45045
Chapter 13 Case

MEMORANDUM OF FACT AND LAW

Nissan Motor Acceptance Corporation as servicing agent for Nissan-Infiniti LT ("Movant") submits this Memorandum of Fact and Law in support of its motion for relief from the stay.

FACTS

Debtor's Chapter 13 Plan has been filed with the Court. The plan provides for Debtor to surrender the leased vehicle. Debtor is in possession of the vehicle subject to a lease agreement dated 4/01/02, and such agreement is a true lease, and not a retail installment contract, as defined by Minn. Stat. §336.2A - 103(j) and §168.66. Movant is the registered owner of the vehicle as reflected by the Certificate of Title. According to the terms of the lease, Debtor is to make monthly payments of \$516.53 for use of the vehicle. Debtor must also pay for any excess mileage and excess wear and tear at termination of the lease. Debtor has the option to purchase the vehicle at the end of the lease agreement by paying the purchase option price in cash.

Debtor is delinquent on lease payments due since May 28, 2004. The NADA retail value of the vehicle is \$20,975.00. NADA pages for this vehicle value are attached as Exhibit "C".

Movant's interest is subject to depreciation in that the vehicle is being used, subjecting it to wear and depreciation, while Debtor is failing to make payments.

The Plan does not provide for assumption of the Lease and for future payments to Movant in accordance with the Lease, including specifically payment of any excess mileage, excess wear and tear, and early termination charges, as well as the monthly lease payment.

ARGUMENT

Pursuant to §362(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such creditor." 11 U.S.C. §362(d)(1).

Debtor has failed to make the Lease payments to Movant and has failed to provide adequate protection of Movant's interest in the vehicle or adequate assurance of future performance under the Lease. Such circumstances constitute cause, within the meaning of §362(d)(1), entitling Movant to relief from stay. In re Reinbold v. Dewey County Bank, 942 F.2d 1304, 1306 (8th Cir. 1991).

If there has been a default in an unexpired lease, the Debtor may not assume the lease unless the Debtor provides for a prompt cure of the default and provides adequate assurance of future performance. 11 U.S.C. §365 (b)(1). Failure to do so constitutes cause, within the meaning of §362(d)(1), entitling Movant to relief from the stay. In re Reice, 88 B.R. 676 (Bkrcty.E.D.Pa. 1988); but see, In re O-Jay Foods, Inc., 110 B.R. 895 (Bkrcty.D.Minn. 1989). Debtor has failed to propose a prompt cure of the existing default.

11 U.S.C. §363(e) permits the court to condition any use of leased property on providing adequate protection to the lessor and, if such adequate protection is provided, then lessor is excluded for seeking relief from the stay under §362. However, the Debtor has not provided Movant with any adequate protection and the court has not established any prohibition or condition on the continued use of the leased property which would exclude Movant from seeking relief under § 362.

Assumption or rejection of an unexpired lease of personal property is subject to court approval and may be done at any time before confirmation of the plan. §365(a) and (d). The plan does not provide for the assumption of the Lease nor for future payments to Movant pursuant to the Lease.

If a lessor is economically disadvantaged by a Debtor retaining leased property without making payments, the lessor can move for relief from the automatic stay under §362(d). In re Intran Corp., 62 B.R. 435, 436 (Bkrcty. D.Minn. 1986). Adequate protection is the "safeguard" to protect a lessor and

moving for relief from the automatic stay or seeking adequate protection is the proper method by which a lessor may force the debtor to either surrender the leased property or make payments equal to the lessor's interest in the property. Id. at 436.

Pursuant to §362(d)(2) of the Bankruptcy Code, relief from the stay is also appropriate where Debtor has no equity in the vehicle and the vehicle is not necessary to an effective reorganization. 11 U.S.C. §362(d)(2). See, In re Gellert, 55 B.R. 970 (Bkrtcy.D.N.H. 1983). Debtor is merely the lessee of the vehicle and has no ownership interest in it. Debtor has no equity in the vehicle. No evidentiary hearing is required on the issue of equity unless the debtor disputes it. Powers v. American Honda Finance Corp., 216 B.R. 95, 97 (N.D.N.Y. 1997).

Bankruptcy Rule 4001(a)(3) imposes a stay of 10 days which the court may, in its discretion, order is not applicable so that Movant may immediately enforce and implement the order granting relief. Advisory Committee Notes to 1999 Amendments to Bankruptcy Rule 4001.

Dated: October 1, 2004

STEWART, ZLIMEN & JUNGERS, LTD.

/e/ Linda Jeanne Jungers

Linda Jeanne Jungers, Atty ID #5303X

Attorneys for Movant

430 Oak Grove Street #200

Minneapolis, MN 55403

612-870-4100

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:
Joel J Duclos,
Debtor,

Case No. 04-45045
Chapter 13 Case

UNSWORN CERTIFICATE OF SERVICE

I, Linda Jeanne Jungers, declare under penalty of perjury that on October 4, 2004, I mailed copies of the attached Notice of Hearing and Motion for Relief from the Stay with Exhibits, Verification, Memorandum of Fact and Law, Certificate of Service, and proposed Order, by first class mail postage prepaid to each entity named below at the address stated below for each entity.

Joel J Duclos
3958 Adair Ave N
Robbinsdale, MN 55422

Barbara J May, Esq.
4105 N Lexington Ave, #310
Arden Hills, MN 55126

Jasmine Z. Keller
Chapter 13 Trustee
12 S. 6th St #310
Minneapolis, MN 55402

U.S. Trustee
1015 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

Executed on: October 4, 2004

Signed: /e/Linda Jeanne Jungers
Linda Jeanne Jungers
STEWART, ZLIMEN & JUNGERS
430 Oak Grove Street, #200
Minneapolis, MN 55403

04-03987-0

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:
Joel J Duclos,

Debtor,

Case No. 04-45045
Chapter 13 Case

ORDER FOR RELIEF FROM THE STAY

Nissan Motor Acceptance Corporation as servicing agent for Nissan-Infiniti LT's Motion for an order granting relief from the stay came before the Court on October 28, 2004 at 2:00 PM o'clock.

Based on the arguments of counsel, all the files, records and proceedings herein, the court being advised in the premises, and the court's findings of fact and conclusions of law, if any, having been stated orally and read in open court following the close of evidence,

IT IS HEREBY ORDERED:

1. The automatic stay is modified to permit Nissan Motor Acceptance Corporation as servicing agent for Nissan-Infiniti LT to terminate the Lease, and to repossess and sell the

2002 NISSAN PATHFINDER 4WD VEHICLE, VIN JN8DR09Y32W726729

in accordance with applicable state law.
2. Notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3), this Order is effective immediately.

Dated: _____

United States Bankruptcy Judge